

PATENT APPLICATION

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re application of

Docket No: Q77969

Shinobu TANAKA

Appln. No.: 10/695,817

Group Art Unit: 2836

Confirmation No.: 7177

Examiner: Carlos David AMAYA

Filed: October 30, 2003

For: UNQUALIFIED PERSON DRIVING PREVENTION APPARATUS FOR VEHICLE

APPEAL BRIEF UNDER 37 C.F.R. § 41.37

MAIL STOP APPEAL BRIEF - PATENTS

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 C.F.R. § 41.37, Appellant submits the following:

Table of Contents

I. REAL PARTY IN INTEREST.....	2
II. RELATED APPEALS AND INTERFERENCES	3
III. STATUS OF CLAIMS	4
IV. STATUS OF AMENDMENTS	5
V. SUMMARY OF THE CLAIMED SUBJECT MATTER	6
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL	8
VII. ARGUMENT.....	9
CLAIMS APPENDIX	14
EVIDENCE APPENDIX:	19
RELATED PROCEEDINGS APPENDIX.....	20

I. REAL PARTY IN INTEREST

The real party in interest is NIPPON YUSOKI CO., LTD., the assignee of the present invention. The assignment was recorded on October 20, 2003, at Reel 014660, Frame 0786.

II. RELATED APPEALS AND INTERFERENCES

Upon information and belief, there are no other prior or pending appeals, interferences or judicial proceedings known to Appellant's representative or the Assignee that may be related to, be directly affected by, or have a bearing on the Board's decision on Appeal.

III. STATUS OF CLAIMS

Claims 1-13 and 15-17 are pending in the application, stand rejected, and are all the claims that are the subject of the present appeal. Specifically, claims 1-6, 8-13 and 15-17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kito (JP 10082223; “Kito ‘223”) and claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Kito’ 223 in view of Thorpe (UK 2,395,331).

All of the claims pending in the present application are set forth in their entirety in Appendix A, attached to this Brief on Appeal.

IV. STATUS OF AMENDMENTS

Prior to the Final Office Action issued on October 30, 2007, Appellant submitted an Amendment under 37 C.F.R. § 1.111. This Amendment was entered as a matter of right. The claims now stand as amended therein. Accordingly, there are no outstanding, non-entered amendments of the claims.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention relates to an apparatus for preventing an unqualified person from driving a vehicle. (*See* Specification, p. 2). The concise description of the claimed subject matter of the present invention is set forth below with regard to each of the respective independent claims 1 and 8. Each of the following discussions include references to various portions of the present application to aid in understanding of the present invention. However, such references, unless otherwise indicated, are intended to point out the described exemplary embodiments; they are not intended to limit the scope of the claims to the express embodiments cited below.

Claim 1

Claim 1 recites an apparatus for preventing an unqualified person from driving a vehicle 1 in which a marker detector 23 (*see* FIGS. 1 and 2) provided in the vehicle 1 to detect a qualified person marker 11 held by a driver having a driving qualification appropriate for driving the vehicle only when the driver holds the qualified person marker opposite the marker detector. (*See* Specification, p. 9, 1st paragraph). The apparatus further includes a control unit 22 for continuously monitoring an output from the marker detector 23 and taking a predetermined measure (*see* p. 11, 1st full paragraph) to ensure safety when a state occurs in which the qualified person marker 11 is not detected (*see* Specification, p. 10, 1st full paragraph, FIGS. 2 & 3), and wherein the predetermined measure is released when the marker detector 23 again detects the qualified person marker 11 (*See* Specification, p. 13, 2nd and 3rd full paragraph).

Claim 8

Claim 8 recites An apparatus for preventing an unqualified person from driving a vehicle 1 in which a marker detector 23 (*see* FIGS. 1 and 2) provided in a floor 2a of a cab of the vehicle 1 (*see* FIG. 1) to detect a qualified person marker 11 provided in a shoe 31 worn by a driver having a driving qualification appropriate for driving the vehicle. (*See* Specification, p. 9, 1st paragraph). The apparatus further includes a control unit 22 for monitoring an output from the marker detector 23 and taking a predetermined measure (*see* p. 11, 1st full paragraph) to ensure safety when a state occurs in which the qualified person marker is not detected (*see* Specification, p. 10, 1st full paragraph, FIGS. 2 & 3), and wherein the predetermined measure is released when the marker detector 23 again detects the qualified person marker 11 wherein the predetermined measure is released when the marker detector again detects the qualified person marker. (*See* Specification, p. 13, 2nd and 3rd full paragraph).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Whether claims 1-6, 8-13 and 15-17 are unpatentable under 35 U.S.C. § 102(b) as being anticipated by Kito (JP 10082223; “Kito ‘223”); and

B. Whether claim 7 is unpatentable under 35 U.S.C. § 103(a) as being unpatentable over Kito’ 223 in view of Thorpe (UK 2,395,331).

For purposes of this appeal, claims 1 and 8 stand together.

VII. ARGUMENT

At least for the reasons discussed below, Appellant submits that the rejections of the claims on appeal are improper, and reversal of each ground of rejection is respectfully requested. Appellant now turns to the rejections at issue.

Claim Rejections - 35 U.S.C. § 102(b)

The Examiner rejected claims 1-6, 8-13 and 15-17 under § 102(b) as being anticipated by Kito (JP 08237734; as indicated in the Office Action).

As evidenced by the following, the rejection of claims 1-6, 8-13 and 15-17 is improper because the applied reference fails to disclose all the features recited in the claims.

Claim 1 recites, *inter alia*, a control unit for continuously monitoring an output from the marker detector and taking a predetermined measure to ensure safety when a state occurs in which the qualified person marker is not detected,

wherein the predetermined measure is released when the marker detector again detects the qualified person marker.

Kito relates to a device for disabling special transport vehicles such as an armored truck. (par. [0001]). Basically, Kito determines if a transponder 11 is present in the shoe 7 of a crew member. (par. [0017]- [0018]). If the proper code of a transponder 11 is not detected, the fuel injection equipment 13 is disabled. (par. [0030]).

In summary, Appellant submits that Kito fails to disclose “*wherein the predetermined measure is released when the marker detector again detects the qualified person marker.*”

Rather, Kito expressly discloses a method for disabling a vehicle by cutting the fuel injection equipment. However, Kito fails to disclose how or when this disable feature is ever released.

Moreover, in view of the disabling procedure disclosed in Kito, such a releasing of the disabled fuel injection equipment 13 by merely repositioning a transponder is not possible. More particularly, Kito only checks to determine if an identification code has been received **after** the engine speed has reached an engine speed (NE) in excess of a predetermined rotational frequency (i.e., > 2000 rpm). However, because Kito's disabling function cuts off the fuel injection equipment, once the fuel injection equipment is disabled, the engine speed can no longer reach the predetermined rotational frequency. Accordingly, the criteria for checking an identification code of a transponder 11 is not again met.

In the Response to Arguments section of the Final Office Action dated October 30, 2007, the Examiner replies

[T]he device disclosed by Kito is for a theft prevention device used in cash transportation vehicles, thus if an authorized person enters the vehicle and restarts the engine after the vehicle has been stopped and the lights and the horn are on (after a theft attempt); operation of the vehicle must be granted to the qualified person holding the marker detector, since the codes will match (see figure 6.)

(*Office Action*, p. 8).

In the Advisory Action, the Examiner comments:

One of ordinary skill in the art would appreciate [sic] that after the car is stopped the measures (stop of engine, head lights on, and horn on) are released when the qualified person holding the marker opposite the marker detector enters the vehicle again and starts the process all over again. Insert the ignition key, and the engine rpm is > 2,000, the timer is activated (S30), and codes

match (S40) the measures (S50) are not engaged/released and normal vehicle operation is granted, since the codes do MATCH.

(*Advisory Action*, p.2).

Thus, the Examiner somehow assumes that the operation of the vehicle must be granted to the qualified person holding the marker detector when he holds the marker detector opposite the marker detector, after a condition where the fuel injection equipment has already been cut in step (S40). However, Appellant respectfully submits that not only is this assumption not disclosed in the reference, the assumption is incorrect. Rather, when the marker is not detected and the fuel injection equipment has been cut, because the engine speed cannot again reach 2000 rpm due to a lack of fuel, Kito's marker comparison process cannot again be engaged.

For instance, Kito's system is disclosed as working as follows:

(1) crew enters automobile, inserts an ignition key and starts the engine (S10) (par.

[0023]; Fig. 4);

(2) after the starting is completed, the engine 15 operates using the fuel injection equipment 13 (par. [0023]);

(3) next the system detects whether the engine speed (NE) has reached more than a predetermined rotational frequency (i.e., > 2000 rpm) (S20) (Fig. 4); and

(4) in step (S40), the IMOB I ECU 16 determines whether an identification code (IMOB I code) from the transponder 11 is received and matches with the IMOB I code set up beforehand - if the codes do not match, actuation of the fuel injection equipment is cut by the IMOB I ECU 16 making the actuation of the engine 2 impossible.

Consequently, because Kito makes the code comparison in step (S40) only after the engine has been started and reached a predetermined rotational frequency in step (S20), no

further comparisons of the codes can be made after the fuel injection equipment is cut as the actuation of the engine 2 is prevented. Therefore, the Examiner's position that "operation of the vehicle must be granted to the qualified person holding the marker detector" after once being deactivated, is incorrect. Rather, after Kito cuts the fuel injection equipment, no further comparisons are made.

Moreover, Kito is directed to an antitheft device for special cars, such as a cash transport truck. (par. [001]). Consequently, one of ordinary skill in the art would rationally understand the need to require some special intervention to enable the fuel injection equipment. Finally, the method expressly disclosed in Kito directly contrasts the Examiner's position. Thus, Appellants respectfully submit the Examiner's position is unsupportable.

Thus, Appellant submits that no portion of Kito discloses that the disablement of the fuel injection is released after the transponder 11 is again detected by the receiver 12. Rather, Kito's method of operation indicates that this is unlikely to occur. Therefore, Kito fails to disclose, "wherein the predetermined measure is released when the marker detector again detects the qualified person marker," as recited in claim 1.

Thus, Appellant submits claim 1 is allowable over Kito for at least this reason. Additionally, Appellant submits that because claim 8 recites a feature similar to the feature set forth above with regard to claim 1, claim 8 is allowable for at least the same reasons set forth above.

Finally, Appellant submits claims 2-6, 9-13 and 15-17 are allowable, at least by virtue of their dependency.

Claim Rejections - 35 U.S.C. § 103(a)

Claim 7 is rejected under § 103(a) as being unpatentable over Kito in view of Thorpe (UK 2,395,331).

Appellant submits that because Thorpe, either taken alone or in combination with Kito, fails to compensate for the above noted deficiencies of Kito as applied to claim 1, claim 7 is allowable at least by virtue of its dependency from claim 1.

Conclusion

Unless a check is submitted herewith for the fee required under 37 C.F.R. §41.37(a) and 1.17(c), please charge said fee to Deposit Account No. 19-4880.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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CLAIMS APPENDIX

CLAIMS 1-13 and 15-17 ON APPEAL:

1. An apparatus for preventing an unqualified person from driving a vehicle, comprising:

a marker detector provided in the vehicle to detect a qualified person marker held by a driver having a driving qualification appropriate for driving the vehicle only when the driver holds the qualified person marker opposite the marker detector; and

a control unit for continuously monitoring an output from the marker detector and taking a predetermined measure to ensure safety when a state occurs in which the qualified person marker is not detected,

wherein the predetermined measure is released when the marker detector again detects the qualified person marker.

2. The apparatus as claimed in claim 1, wherein the measure is a warning for appealing to the sense of sight or the sense of hearing of the driver.

3. The apparatus as claimed in claim 1, wherein the measure is stopping the driving of the vehicle.

4. The apparatus as claimed in claim 1, wherein the measure comprises a warning for appealing to the sense of sight or the sense of hearing of the driver and the stopping of the driving of the vehicle is performed after the warning.

5. The apparatus as claimed in claim 1, wherein the measure is released when the marker detector again detects the qualified person marker.

6. The apparatus as claimed in claim 1, wherein the control unit takes the measure when a state occurs in which the qualified person marker is not detected for a predetermined time period.

7. The apparatus as claimed in claim 1, further comprising a driver detector for detecting the presence or absence of a driver riding on the vehicle,

wherein the control unit takes the measure when the qualified person marker is not detected by the marker detector and the driver is detected by the driver detector.

8. An apparatus for preventing an unqualified person from driving a vehicle, comprising:

a marker detector provided in a floor of a cab of the vehicle to detect a qualified person marker provided in a shoe worn by a driver having a driving qualification appropriate for driving the vehicle; and

a control unit for monitoring an output from the marker detector and taking a predetermined measure to ensure safety when a state occurs in which the qualified person marker is not detected,

wherein the predetermined measure is released when the marker detector again detects the qualified person marker.

9. The apparatus as claimed in claim 8, wherein the measure is a warning for appealing to the sense of sight or the sense of hearing of the driver.

10. The apparatus as claimed in claim 8, wherein the measure is stopping the driving of the vehicle.

11. The apparatus as claimed in claim 8, wherein the measure comprises a warning for appealing to the sense of sight or the sense of hearing of the driver and a stopping the driving of the vehicle after the warning.

12. The apparatus as claimed in claim 8, wherein the marker detector detects the qualified person when the qualified person marker provided in a shoe is disposed opposite the marker detector provided in the floor of the cab.

13. The apparatus as claimed in claim 1 the marker detector further comprising:
a receiving antenna;

a power source unit connected to the receiving antenna and configured to generate an electrical power signal in response to an electromagnetic signal coupling into the receiving antenna;

a modulation unit powered by the electrical power signal and configured to modulate a signal identifying the qualified person marker and indicating that a driver of the vehicle is qualified to drive the vehicle; and

a sending antenna connected to the modulation unit and configured to transmit the modulated signal, wherein the qualified marker is disposed in a shoe of a driver qualified to drive the vehicle.

14. (canceled).

15. The qualified person marker claimed in claim 13, wherein the receiving antenna receives the electromagnetic signal from a marker detector located in the vehicle only when the qualified person marker is placed opposite the marker detector.

16. The apparatus as claimed in claim 8, the marker detector further comprising:
a receiving antenna;

a power source unit connected to the receiving antenna and configured to generate an electrical power signal in response to an electromagnetic signal coupling into the receiving antenna;

a modulation unit powered by the electrical power signal and configured to modulate a signal identifying the qualified person marker and indicating that a driver of the vehicle is qualified to drive the vehicle; and

a sending antenna connected to the modulation unit and configured to transmit the modulated signal, wherein the qualified marker is disposed in a shoe of a driver qualified to drive the vehicle.

17. The qualified person marker claimed in claim 16, wherein the receiving antenna receives the electromagnetic signal from a marker detector located in the vehicle only when the qualified person marker is placed opposite the marker detector.

EVIDENCE APPENDIX:

Pursuant to 37 C.F.R. § 41.37(c)(1)(ix), submitted herewith are copies of any evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 or any other evidence entered by the Examiner and relied upon by Appellant in the appeal.

None.

RELATED PROCEEDINGS APPENDIX

Submitted herewith are copies of decisions rendered by a court or the Board in any proceeding identified about in Section II pursuant to 37 C.F.R. § 41.37(c)(1)(ii).

None.

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SUBMISSION OF APPEAL BRIEF

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Commissioner for Patents

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Alexandria, VA 22313-1450

Sir:

Submitted herewith please find an Appeal Brief. The statutory fee of \$510.00 is being charged to Deposit Account No. 19-4880 via EFS Payment Screen. The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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